No. 73-1377 and No. 73-1378

MICHAEL RODAK, JR.,

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

RUSSELL E. TRAIN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

vs.

THE CITY OF NEW YORK ON BEHALF OF ITSELF AND ALL OTHER SIMILARLY SITUATED MUNICIPALITIES WITH THE STATE OF NEW YORK

CITY OF DETROIT, PARTY PLAINTIFF

RUSSELL E. TRAIN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

vs.

CAMPAIGN CLEAN WATER, INC.

AMICUS CURIAE BRIEF OF THE STATES OF TEXAS, WISCONSIN, MISSOURI, OKLAHOMA AND KANSAS

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INTRODUCTION

In October, 1972, after more than two years of deliberation, Congress overwhelmingly passed a far-reaching water pollution control bill which had as its objective the restoration of the nation's waters to their natural state.[1] The heart of this ambitious undertaking was the commitment of vast amounts of federal funds to state and local governments to assist in the contruction of sewage treatment plants. The administration had opposed the bill because of the funding mechanism employed in the bill to ensure the availability of these sums. Consistent with that position, the President vetoed the bill, citing its inflationary nature. When the vetoed bill was returned to the Congress, the principal spokesmen for the bill in both houses, while acknowledging the magnitude of the federal spending called for, reiterated the vital importance of cleansing this country's lakes and streams; the veto was overriden by decisive margins.

A month later, the President ordered the Administrator of the Environmental Protection Agency[2] to allot to the States only $5 billion of the $11

[1]The bill, S. 2770, 92d Cong., 2d Sess., was enacted as the Water Pollution Control Act Amendments of 1972, P.L. 92-500, 86 Stat. 816, 33 U.S.C. §§ 1251 *et seq.* (Supp. 1974) (hereinafter referred to as the "Act").

[2]Hereinafter referred to as "the Administrator". At the time the actions complained of herein took place and at the time this action was commenced, the Administrator was William D. Ruckelshaus. The present Administrator is Russell E. Train, the Petitioner herein.

billion authorized by Congress for the first two fiscal years of the program's operation, thus seeking to accomplish by the controversial practice of "impoundment"[3] what he had failed to achieve in exercising his constitutional veto power.

INTEREST OF AMICI

The first interest of the *amici* is purely a legal one. The Court's decision in the instant cases will be largely determinative of similar litigation presently pending in the Court of Appeals for the Fifth Circuit in which Texas, Wisconsin, Missouri, Oklahoma, and Kansas, *amici* herein, are parties.[4] *Amici* have petitioned for writ of certiorari prior to a decision on the merits by the court of appeals, feeling that judicial economy and the interests of all parties would be served by joining the *Texas* case with the *City of New York* and the *Campaign Clean Water* cases for final resolution by the Court.[5] While granting of certiorari in these circumstances

[3]As used herein, the term "impoundment" means any action of the Executive which prevents the allotment, obligation, or expenditure of funds authorized or appropriated by Congress.

[4]*Texas v. Train*, Nos. 73-3965 & 73-4026 (5th Cir., filed Jan. 9, 1974). Written briefs have been filed and oral argument was held before the court of appeals on April 29, 1974, the date on which this court granted petitions for certiorari in the instant cases. On May 28, 1974, the court of appeals informed counsel that ". . . disposition of [*Texas v. Train*] is being withheld pending decision of the Supreme Court in the [*City of New York* and *Campaign Clean Water* cases]. . . ." (Addendum I hereto).

[5]*Texas v. Train*, No. 73-1895 (Sup. Ct., filed June 19, 1974).

would both be appropriate and consistent with the past practice of the Court,[6] prudence dictates that an *amicus* brief be filed at this time so that the views of Texas and her sister States in this litigation may be known to the Court in the event certiorari is denied.

The second interest derives from the concern of *amici* for the health, safety, and welfare of their citizens who depend for their recreation, their livelihood, and their very existence on the waters of the States. Without the funds that have been impounded by the Administrator, many needed municipal pollution control facilities will not be built, and the waters into which raw or inadequately treated municipal sewage now runs daily will continue to deteriorate.

A good starting point to understanding the damage the Administrator has inflicted by his impoundment action is to note the dramatic difference between the sums the *amici* States have actually received under the reduced allotments ordered by the President and the sums these States would have received had full allotment been permitted. That difference is revealed in the following tables.

[6] See e.g., *Turner v. City of Memphis*, 369 U.S. 350 (1962); *Taylor v. McElroy*, 360 U.S. 709 (1959); *Brown v. Board of Education of Topeka*, 344 U.S. 1 (1952); C. WRIGHT, FEDERAL COURTS § 106, pp. 477-78 (1970).

Table 1: Full Allotments & Reduced Allotments for Fiscal Years 1973 and 1974

States' Percentage Share	FULL ALLOTMENT $5 Billion 1973	FULL ALLOTMENT $6 Billion 1974	REDUCED ALLOTMENT $2 Billion 1973	REDUCED ALLOTMENT $3 Billion 1974
Texas 2.7694%	$138,470,000	$165,744,000	$55,388,000	$83,082,000
Wisconsin 1.7415%	$ 87,075,000	$104,490,000	$34,830,000	$52,245,000
Missouri 1.6556%	$ 82,780,000	$ 99,336,000	$33,112,000	$49,668,000
Oklahoma .4608%	$ 23,040,000	$ 27,648,000	$ 9,216,000	$13,824,000
Kansas .3742%	$ 18,710,000	$ 22,452,000	$ 7,484,000	$11,226,000

Table 2: Summary of Total Allotments & Effect on States for Fiscal Years 1973 and 1974.

State	Total Reduced Allotment 1973 & 1974	Total Full Allotment 1973 & 1974	TOTAL AMOUNT WITHHELD
Texas	$138,470,000	$304,214,000	$165,744,000
Wisconsin	$ 87,075,000	$191,565,000	$104,490,000
Missouri	$ 82,780,000	$182,116,000	$ 99,336,000
Oklahoma	$ 23,040,000	$ 50,688,000	$ 27,648,000
Kansas	$ 18,710,000	$ 41,162,000	$ 22,452,000

As can be seen rather readily, the practical effect of the Administrator's action was to give to the States for fiscal years 1973 *and* 1974 what they should have received for 1973 *alone*. In short, the States were effectively denied their fiscal 1974 allotment.

The amount in controversy, then, insofar as *amici* are concerned, is approximately $420 million. In anyone's terms, this is a truly significant sum of money. The sheer size of the amount suggests strongly that its impoundment has injured the *amici* States grievously. But the true magnitude of the damage cannot be assessed until what has been withheld is contrasted with what the States really need to meet the clean water goals of the Act.

The Administrator, predictably, would have the Court believe that his impoundment of these great sums has caused no injury at all. Appended to his brief is a table summarizing the status of the grant program as of May 31, 1974.[7] It shows generally that the States have yet to use up even the limited amounts they have already been alloted. Texas, for example, is shown as having obligated 99% of its 1973 allotment ($55 million), but only 5% of its 1974 allotment ($83 million), and none of its 1975 allotment ($107 million). The implication, indeed the express meaning, of this data, according to the Administrator, is that the States have not suffered any adverse effect — that is, no qualified project has been turned back — because of the paucity of

[7]Brief for the Petitioner at 49.

the allotments, and that no such effect will be felt unless the President, when the currently allotted sums are exhausted, "decides not to authorize immediately further allotments . . . ."[8]

This picture is highly misleading. First of all, it is grossly at odds with the evidence — evidence undisputed by the Administrator — presented in *Texas v. Train* which showed that Texas, as of June, 1973, had 164 present and pending grant applications totalling $179,456,924, approximately $41 million more than the *combined* total of the Texas allotments for fiscal years 1973 *and* 1974.[9] The evidence also showed that 34 grant applications had already been returned to Texas as not being high enough on the State's priority list to be eligible for 1973 funds.[10] This evidence was likewise undisputed by the Administrator. The situation is no better today, even though the allotment for fiscal year 1975 has now been received.[11] Texas' current list of

[8] *Id.* at 7.

[9] Affidavit of Hugh C. Yantis, Executive Director of the Texas Water Quality Board filed in *Texas v. Fri*, A-73-CA-38 (W.D. Tex., decided Oct. 2, 1973). This evidence was specifically noted by the district court in ruling that the Administrator had violated the Act. See copy of the district court's unpublished opinion appended to the petition for certiorari filed by *amici*. Note 5, *supra*. Similar undisputed evidence was offered by Wisconsin and Missouri and may be found in the printed appendix in the court of appeals at pages 61-70 and pages 86-89, respectively.

[10] Yantis affidavit. This evidence was likewise noted in the district court's opinion.

[11] Practically before the ink was dry on the district court's order disallowing the impoundment of 1973 and 1974 funds, the Administrator, on January 10, 1974, impounded $3 billion of the $7 billion authorized by the Act for fiscal year 1975. Texas has filed suit challenging this action. *Texas v. Train*, No. A 74 CA 004 (W.D. Tex., filed Jan. 14, 1974).

grant applications amounts to $169 million, approximately $27 million more than the $142 million still available for obligation.[12] Many of these applications are for just the preparation of preliminary design studies. To actually construct these projects will require at least $615 million. Thus the real deficit in grant funds is approximately $450 million.[13]

These figures, while staggering, still do not show fully the dimensions of the municipal waste treatment problems facing the States, because they only represent waste treatment needs that have been formally translated into grant applications. What are the *real* needs of the States? The latest EPA survey of what it will cost the States to meet the goals and deadlines of the Act reveals that the nationwide figure is not $18 billion, as estimated by EPA in 1971 and adopted by Congress in the Act in 1972, but over three times that amount — $60.1 billion.[14] The striking difference between the EPA estimated needs in each of the *amici*

[12]These figures are based on data compiled by the Texas Water Quality Board and communicated by letter to the Texas Congressional delegation dated July 2, 1974. A news account of that letter and a listing of the Texas projects that will not be funded as a result of the inadequacy of the present allotments is attached hereto as Addendum II. TEXAS POLLUTION REPORTS, July 2, 1974 at p. 2.

[13]*Id.*

[14]Environmental Protection Agency, *Report to the Congress: Costs of Construction of Publicly-Owned Waste Water Treatment Works: 1973 "Needs" Survey* (revised, Nov. 1973) at B-1. Among the reasons listed by EPA for the over 300% increase between the 1971 and 1973 estimates were the Act's 1977 "secondary treatment" deadline, new requirements to meet more stringent water quality standards, and increased construction costs. *Id.*

States and the amounts the Administrator has allotted is shown in the following table.

Table 3: Estimated Costs vs. Amounts Allotted

State	Estimated Cost[15] (Millions of Dollars)	Combined Allotment FY 1973-1975 (Millions of Dollars)	Deficit (Millions of Dollars)
Texas	889	244	645
Wisconsin	787	139	648
Missouri	972	158	814
Oklahoma	624	70	554
Kansas	671	58	613

That the States desperately need what has been withheld from them in water pollution funds is therefore beyond the slightest question. The delays that have precluded the immediate obligation of the patently inadequate sums that have been allotted — the principal cause of which has been EPA's changing grant requirements[16] — should not be allowed to obscure this fact. Moreover, the Administrator's impoundment of funds has undeniably had a "chilling effect" on those municipalities who might otherwise have sought a grant from EPA. With present

[15] *Id.* at 12.

[16] See, *Hearings Before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works, 93d Cong., 1st Sess., on the Environmental Protection Agency's 1973 Needs Survey* at pp. 27, 32-33 (remarks of John Quarles, Deputy Administrator of EPA).

allotments obviously inadequate to fund even existing grant applications, there is little incentive to suffer the time and expense of completing and processing a grant form. Allotment of the funds that have been impounded would clearly allow more applications to be processed by the States and forwarded to EPA for its consideration. In a word, the Act's program to help cleanse this Nation's waters of municipal waste could proceed as Congress intended.

ARGUMENT AND AUTHORITIES

A. *Summary of Argument.*

It is the position of *amici* that the Administrator is afforded *no discretion* by the Act to determine what amounts to allot among the States and that, indeed, he is required to allot $5 billion and $6 billion for fiscal years 1973 and 1974, respectively, which are the full sums authorized by the Act. First, the conclusion that Congress intended to permit an allotment of less than the full sums authorized to be appropriated is totally at odds with the clear legislative intent, manifested by the Act as a whole and its legislative history, that the objectives of the Act be achieved and that the full sums authorized for municipal sewerage construction represented the minimum amounts required to do so. Secondly, the legislative history of the Conference Committee amendments upon which the Administrator relies to justify his action makes clear

that any control over the rate of actual expenditure funds was intended by Congress to be exercised at the project approval stage, rather than at the allotment stage, and even then only insofar as it remained consistent with the clean water objectives of the Act. Thus by reducing allotments for anti-inflationary considerations, the Administrator acted at the wrong time for the wrong reason. The Administrator's recently contrived argument that he is empowered to make subsequent allotments, thereby controlling the "rate" of spending, is without support in the Act and is, indeed, at odds with the Act's mechanism for continual funding, the process of "reallotment".

The Administrator's jurisdictional arguments are likewise without merit. At issue is whether the Administrator violated the Act by impounding over half what Congress had so carefully concluded would be required to assist the States and cities in meeting the Act's rigorous deadlines and goals. Determining what the law is has historically been the function of the Judiciary, and neither the doctrine of sovereign immunity nor that of political question are available to block the courts from performing that function in this case.

B. *The only discretion given the Administrator by the Act in the construction grant funding process is at the project approval stage, rather than the allotment stage, and must be exercised in a manner consistent with the requirements and purposes of the Act.*

1. *The Act, its background and purposes.*

Trying to avoid the inescapable conclusion that he has blatantly ignored the will of Congress by the action complained of here, the Administrator has omitted from his brief any discussion of the overall Act as it interrelates with the grant program, and has likewise failed to mention the background against which the Act was passed. No doubt the City of New York and Campaign Clean Water will detail these matters for the Court. *Amici* would simply note two salient points.

First, until the passage of the Act in 1972 the federal program of waste treatment grants had been an abysmal failure. One of the principal reasons was the method of funding the program — the traditional authorization/appropriation process. Under the old Federal Water Pollution Control Act, as amended, only those sums actually appropriated by Congress pursuant to the authorization contained in the Act could be allotted to the States and "[n]either a finding by the Secretary that a project meets the requirements of this subsection, nor any other provision of this subsection shall be construed to constitute a commitment of the United States to provide funds or pay any grant for such project." 33 U.S.C. § 1158 (1970). As happens so often, Congress never appropriated as much as it had authorized. As an inevitable result, construction of treatment works proceeded at an agonizingly slow pace. In 1971 the Senate Committee on Public Works, in a report to the full Senate on its version of the new Act (S. 2770), observed that:

> [t]he lack of adequate funding of grants to assist States and localities in constructing sewage treatment plants is causing critical problems.
>
> Of the $3.4 billion authorized for this purpose by the 1966 legislation, only $2.2 billion was appropriated. The backlog of projects eligible for Federal payments has reached a total of nearly $2 billion.[17]

The Administration's proposal for federal assistance for waste treatment construction, embodied in S. 1013 submitted by Senator John Sherman Cooper in 1971, would have perpetuated the traditional funding process with an authorization to appropriate $6 billion over a three year period. Both the Senate (in S. 2770) and the House (in H.R. 11896) rejected this approach in favor of contract authority. Congress stood firm in its choice of this funding mechanism, despite the opposition of then Administrator Ruckelshaus that the contract authority approach "sidesteps all the safeguards provided by the budgetary-appropriations process."[18]

It is at best illogical, and at worst absurd, to suggest that Congress chose allotment and contract authority

[17]S. Rept. No. 92-414, 92nd Cong., 1st Sess. 5 (1971); 2 U.S. Code Cong. Admin. News at 3672 (1972); Library of Congress, *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972* at 1415, 1423 (hereinafter referred to as *Legislative History*).

[18]*Hearings Before the Committee on Public Works, House of Representatives, 92d Cong., 1st Sess., on H.R. 11896, H.R. 11895* at 297; *Legislative History* at 1195. (Ruckelshaus letter of December 13, 1971, to Rep. John A. Blatnik, Chairman, Committee on Public Works).

over the Administration's objections to remove the uncertainty from the construction grant program, and then simultaneously reinjected the same uncertainty back into the system by giving the Administrator the discretion to choose the amount to be made available by allotment.

Second, the 1972 Act made the grant program an integral part in achieving the Act's overall purpose — "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a)(1974 Supp.). Of the $24.6 billion authorized to implement the Act, $20.75 billion ($18 billion for fiscal years 1973-1975, and $2.75 billion for reimbursement of projects already underway in 1972 with State funds) was designated for the grant program.

Congress concluded that these substantial sums for waste treatment plant construction were needed to assist States and local governments in achieving two specific requirements of the bill. First, the Act requires generally that "secondary" or "more stringent" sewage treatment be achieved in all publicly owned treatment works existing on July 1, 1977. 33 U.S.C. § 1311(b)(1)(B)(1974 Supp.). Secondly, the Act requires that by July 1, 1983, all publicly owned treatment works provide for the application of the "best practicable" waste treatment technology over the life of the plant. 33 U.S.C. § 1311(b)(2)(B)(1974 Supp.).

Having set the deadlines and goals and provided the financial assistance to meet them, Congress created a rigorous mechanism of enforcement. Violation of the Act renders a municipality liable for civil penalties up to $10,000 a day. Willful or negligent violations are punishable by criminal fines from $2,500 to $25,000 per day, by imprisonment for not more than one year, or both.[19] 33 U.S.C. § 1319 (1974 Supp.). The Act may also be enforced by private citizens. 33 U.S.C. § 1365 (1974 Supp.). Successful private litigants may obtain, in addition to injunctive relief, their costs of litigation, including attorney and expert witness fees. *Id.*

By enactment of this interrelated statutory scheme of deadlines, assistance, and enforcement, Congress sought to require the Administrator to conduct a waste treatment plant construction grant program to ensure generally the restoration of the nation's navigable waters to their natural state, the attainment of secondary or more stringent treatment by mid-1977, and the employment of "best practicable" treatment technology by mid-1983.

The Administrator's impoundment of funds has made attainment of these goals impossible, and has left the States and cities vulnerable to civil and criminal

[19]If a municipality is a party to a civil action under the Act, the State in which the municipality is located must be joined as a party and, to the extent that State law prevents the municipality from raising funds to pay a civil penalty, the State shall be liable for the payment of any judgment.

liability. This cannot have been the intent of Congress.[20]

2. *The Meaning of the "Harsha Amendments".*

Ignoring the rest of the Act and its legislative history, the Administrator cites two small alterations made in S. 2770 by the Conference Committee as supporting his right to allot as much or as little as he pleases.[21] The two amendments in question were to Sections 205 and 207 of the Act, as shown below (bracketed material deleted, italicized material added).

ALLOTMENT

> Sec. 205 (a) [All] sums authorized to be appropriated pursuant to section 207 for each fiscal year beginning after June 30, 1972, *shall be* allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment for fiscal year 1973 shall be made not later than 30 days after the date of enactment of the Federal Water Pollution Control Act Amendments . . . .

* * * *

AUTHORIZATION

> Sec. 207. There is authorized to be appropriated to carry out this title . . . for the fiscal year ending June 30, 1973, *not to exceed* $5,000,000,000, for the

[20]In the hearings on EPA's 1973 needs survey, Senator Muskie expressed concern over this problem, noting that "Congress considered funding as inextricably related to the deadlines and statutory objectives." See Needs Survey Hearings, *supra*, note 16 at 52.

[21]Brief for the Petitioner at 16-19.

> fiscal year ending June 30, 1974, *not to exceed* $6,000,000,000 and for the fiscal year ending June 30, 1975, *not to exceed* $7,000,000,000.

The explanatory statements made by Congressman Harsha, the conferee at whose suggestion the amendments were made, and those of Senator Muskie, the manager of the Senate conferees and the bill's principal sponsor, make clear, however, that these amendments were simply to clarify the Administrator's flexibility to control the actual *expenditure* of funds, and were not meant to permit a reduction in the amounts made available at the allotment stage for potential obligation and expenditure. Here it is important to remember that commitment or obligation of funds can occur under the Act only when and if the Administrator approves a specific waste treatment project. 33 U.S.C. § 1284 (1974 Supp.).

In explaining the amendments to the House on October 4, 1972 (before the President's veto), Congressman Harsha stressed that their sole purpose was to ensure that the Administrator would have flexibility with regard to the obligation and expenditure of funds:

> I want to point out that the elimination of the word "all" before the word "sums" in section 205(a) and insertion of the phrase "not to exceed" in section 207 was intended by the managers of the bill to *emphasize* the President's flexibility to control the *rate* of spending. (Emphasis added.)[22]

[22] 118 Cong. Rec. at H 9122 (Daily ed. October 4, 1972); *Legislative History* at 243.

A discussion among Congressmen Gerald R. Ford, Harsha and Jones[23] sheds further light on the meaning and intent of the amendments:

> MR. GERALD R. FORD . . . . I think it is vitally important that the intent and purpose of section 207 is spelled out in the legislative history here in the discussion on this conference report.
>
> As I understand the comments of the gentleman from Ohio (Harsha), the inclusion of the words in section 207 in three instances of "not to exceed" indicates that is a limitation. More importantly that it is not a mandatory requirement that in 1 year ending June 30, 1973, there would be $5 billion and the next year ending June 30, 1974, $6 billion and a third year ending June 30, 1975, $7 billion *obligation* or *expenditure* ?
>
> Mr. HARSHA. I do not see how reasonable minds could come to any other conclusion than that the language means we can *obligate* or *expend up to that sum* — anything up to that sum but not to exceed that amount . . . .
>
> Mr. GERALD R. FORD. Mr. Speaker, I would like to ask the distinguished chairman of the subcommittee and the chairman of the House conferees whether he agrees with the gentleman from Ohio. (Mr. HARSHA).
>
> Mr. JONES of Alabama . . . . My answer is "yes". Not only do I agree with him, but the gentleman from Ohio offered this amendment which we have now under discussion in the committee of conference, so there is no doubt in anybody's mind of the intent of the language. It is reflected in the language just explained by the gentleman from Ohio. (Mr. HARSHA).

[23]Congressman Jones was Chairman of the Conference Committee and a floor manager of the bill.

> Mr. GERALD R. FORD. Mr. Speaker, this clarifies and certainly ought to wipe away any doubts anyone has. *The language is not a mandatory requirement for full obligation and expenditure up to the authorization figures in each of the 3 fiscal years.* (Emphasis added.)[24]

Senator Muskie's[25] explanation of the Harsha amendments on October 4, 1972, similarly stated that the amendments were intended only to grant obligational and expenditure flexibility and that the sums specified in Section 207 must be allotted, even though they need not be fully obligated:

> Under the amendments proposed by Congressman WILLIAM HARSHA and others, the authorization for obligational authority are "not to exceed" $18 billion over the next 3 years. Also, *"all" sums authorized to be obligated need not be committed, though they must be allocated.* These two provisions were suggested to give the Administration some flexibility concerning the *obligation* of construction grant funds. (Emphasis added.)[26]

It was with this understanding of the meaning and intent of the amendments that the Congress overwhelmingly passed the bill. The President evidenced a like understanding of the effect of Sections

[24]118 Cong. Rec. at H. 9123; *Legislative History* at 247.

[25]Senator Muskie is Chairman of the Senate Subcommittee on Air and Water Pollution (which reported the Senate version, S 2770), and he was the sponsor of the legislation, a floor manager and a member of the Conference Committee.

[26]118 Cong. Rec. at S 16871; *Legislative History* at 166.

205 and 207 when he vetoed the bill. He stated in his veto message that:

> Certain provisions of . . . [the bill] confer a measure of *spending discretion and flexibility* upon the President, and if forced to administer this legislation I mean to use those provisions to put the brakes on budget-wrecking expenditures as much as possible.
>
> But the law would still exact an unfair and unnecessary price from the public. For I am convinced . . . that the pressure for full funding under this bill would be so intense that funds approaching the *maximum authorized amount could ultimately be claimed and paid out*, no matter what technical controls the bill appears to grant the Executive. (Emphasis added).[27]

The President thus expressed a clear understanding that Sections 205 and 207, as amended by the conferees, only gave the Administrator "spending discretion and flexibility". The President realized that the sums specified in Section 207 had to be allotted and thus available for obligation. He was prompted to veto the bill by his fear that pressures to obligate available funds would overcome the Administrator's spending flexibility.

After the President's veto the conference amendment of Sections 205 and 207 were again discussed in both houses. On October 17, 1972 Senator Muskie reiterated that the sole intent and purpose of the amendments was

[27] 118 Cong. Rec. at S 18534 — S 18535 (Daily ed. October 17, 1972); *Legislative History* at 139.

to give the Administrator some flexibility concerning the *obligation* of the sums specified in Section 207 but that he must, in any event, allot those sums.[28] Congressman Harsha repeated his explanation of the amendments to the House on October 18, 1972.

> I want to point out the elimination of the word "all" before the word "sums" in section 205(a) and insertion of the phrase "not to exceed" in section 207 was intended to emphasize the President's *flexibility to control the rate of spending*.
>
> . . . .
>
> Second, I would like to point out that the Administrator of the Environmental Protection Agency must approve plans, specifications, and estimates. *This is the pacing item in the expenditure of funds. It is clearly the understanding of the managers that under these circumstances, the Executive can control the rate of expenditures.* (Emphasis added.)[29]

[28]118 Cong. Rec. at S 18546, S 18549; *Legislative History* at 116, 122. On January 31, 1973 Senator Muskie stated before the Senate Subcommittee on Separation of Powers that the Act mandated allotment of $5 billion and $6 billion in fiscal years 1973 and 1974 respectively. See generally, *Joint Hearings on Impoundment of Appropriated Funds by the President Before the Ad Hoc Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess., 407-408 (1973). Because of Senator Muskie's important role respecting the passage of the Act, his statement, made so recently after enactment of the Act and directed to the construction in question, is entitled to great weight in interpreting the statute. *See, United States v. United Mine Workers of America*, 330 U.S. 258, 281-282 (1947); *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 329-330 (1942).

[29]118 Cong. Rec. at H. 10268 (Daily ed. October 18, 1972); *Legislative History* at 98. The use of the word "emphasize" by Congressman Harsha is an acknowledgement that his amendments were not intended to make a substantive change in the Act.

Congressman Harsha then explained the impact of the Act's funding provision in terms of expenditures in future fiscal years. In so doing, he demonstrated clearly that it was his understanding that Sections 205 and 207 required allotment of the full amount of the sum specified in Section 207:

> [T]he first major impact of the obligations from the $5 billion authorizations for the fiscal year ending June 30, 1973, is in fiscal year 1975. . . .
>
> As a matter of fact, for fiscal year 1973 if *all the money were obligated and placed under contract, there would only be $20 million needed to meet the obligations. . .* (Emphasis added.)[30]

Congressman Harsha's hypothetical presumed that the entire $5 billion would be available by allotment for obligation and was intended to emphasize to the House that the President's fear about "budget-wrecking" was unwarranted in view of the lag between the "obligation" of funds and the time when they would actually be spent. Senator Muskie made the same point to the Senate the day before, when he noted that the full $18 billion authorized by the Act probably would not be spent until the end of fiscal year 1979.[31]

The statements of these legislators, as the creators of the Act, are of controlling weight in interpreting the meaning, intent and purpose of Section 205 and 207. *See, e.g., First National Bank of Logan, Utah v. Walker Bank and Trust Co.*, 385 U.S. 252 (1966); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-395 (1951); *Pan American World Airways, Inc. v. Civil*

[30] *Id.*

[31] 118 Cong. Rec. at S 18547 (Daily ed. Oct. 17, 1972); *Legislative History* at 119.

Aeronautics Bd., 380 F.2d 770, 779-782 (2nd Cir. 1967); *aff'd per curiam sub nom., World Airways, Inc. v. Pan American Airways, Inc.*, 391 U.S. 461 (1968). These members of the House and Senate Public Works Committees were fully familiar with the funding mechanism of the Act They knew the difference between allotment, obligation, and expenditure and cannot be assumed to have used these words loosely or inadvertently. It is especially significant, moreover, that on October 18, 1972, after the President's veto and veto message, Congressman Harsha expressed an understanding that the Act mandated the allotment of the full amount of the sums specified in Section 207. As sponsor of the amendatory language upon which Defendant has relied to reduce allotments, Congressman Harsha's understanding is particularly persuasive. *See, National Labor Relations Bd. v. Fruit & Veg. Pack. & Whse., Loc. 760*, 377 U.S. 58, 66-67 (1964).

There emerges only one interpretation of Sections 205 and 207. The Administrator *must allot* among the States $5 billion in fiscal year 1973, $6 billion in fiscal year 1974 and $7 billion in fiscal year 1975[32]. He may,

[32]Former EPA Administrator Ruckelshaus candidly recognized, after he left EPA, that this was his interpretation of what Congress had intended:

> I think this was the intention of Senator Muskie and others when the law was passed— get out of the business of having to draw up priorities with various projects, and be able to say they can fund them all at once. I also recognize it is very frustrating to the States, that they have to go through this priority process again when they felt they were out of it, as a result of the amount of funding.

Joint Hearings on Impoundment of Appropriated Funds by the President before the Ad Hoc Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 93d Cong., 1st Sess., at 418 (1973).

however, in the exercise of his discretion to approve construction project plans, specifications and estimates under Section 203, *control the rate of obligation* of those allotted sums and hence the rate of expenditures resulting from such obligations. This obligational and expenditure flexibility is the only discretion afforded the Administrator with regard to the sums specified in Section 207.

Even at the contract approval stage, however, the Administrator may not refuse to obligate funds on the grounds unrelated to the Act. The most instructive authority on this point is the Eighth Circuit's well-reasoned opinion in *State Hwy. Comm'n of Missouri v. Volpe*, 479 F.2d 1099 (8th Cir. 1973), not only because it involved the Federal-Aid Highway Act,[33] expressly acknowledged by Congress as the model for Title II of the Act,[34] but because the reason for the impoundment was the need to control inflationary pressures.

In that case the Secretary of Transportation had apportioned (allotted) the total sum authorized to be appropriated[35] but had imposed "contract controls" forbidding actual obligation of the full amount so apportioned. The State Highway Commission of Missouri brought suit seeking to compel the Secretary

[33]23 U.S.C. § 101, *et seq.* (1964).

[34]118 Cong. Rec. H 2506 (Daily ed. March 27, 1972); *Id.* at S 16872 (Daily ed. Oct. 4, 1972); *Legislative History* at 367, 368.

[35]*See*, 23 U.S.C. § 104(b) (1964).

to rescind the controls and to release the funds. The trial court held for the plaintiff[36] and the Eighth Circuit affirmed. In so doing, the court of appeals analyzed the whole act to discern its intent and purposes and concluded that:

> To reason that there is implicit authority within the Act to defer approval for reasons totally collateral and remote to the Act itelf requires a strained construction which we refuse to make. It is impossible to find from these specific grants of authority discretion in the Secretary to withhold approval on projects Congress has specifically directed because of a system of priorities the Executive chooses to impose on all expenditures. The Congressional intent is that the Secretary may exercise his discretion to insure that the roads are well constructed and safely built at the lowest possible cost, all in furtherance of the Act, but when the impoundment of funds impedes the orderly progress of the federal highway program, this hardly can be said to be favorable to such a program. In fact it is in derogation of it. It is difficult to perceive that Congress intended such a result. *State Hwy. Comm'n of Missouri v. Volpe*, 479 F.2d at 1114 (8th Cir. 1973).

Likewise in the instant case Congress cannot be presumed to have intended to permit the Administrator to disapprove a construction project because of considerations related to inflation. As made plain earlier, Congress knew of the Administration's objections to the funding provisions of the Act and by overriding the veto, Congress reiterated its

[36] *State Hwy. Comm'n of Missouri v. Volpe*, 347 F. Supp. 950 (W.D. Mo. 1972).

disagreement with the President's dire predictions of the Act's impact on the economy.

Furthermore, it was the expressed intent of Congress that the Administrator's discretion would be limited by the purposes and objectives of the Act. Congressman Jones, in the course of his explanation of the Conference Report to the House, declared that "[t]he Congress has given to the Administrator the most explicit guidance that it could contrive as to what factors and parameters he is to take into account in the administration of this act."[37] Moreover, Senator Muskie, in discussing the Conference amendments to Sections 205 and 207, which were intended to emphasize the Administrator's obligational and expenditure flexibility, also addressed the question of the limits of the Administrator's discretion, stating that "[t]he conferees do not expect these provisions to be used as an excuse in not making the commitments necessary to achieve the goals set forth in the act."[38]

In short, the Administrator's discretion under Section 203 is limited by the letter and intent of the Act. He may not use the narrowly circumscribed authority over project approval to defeat or postpone the clean water goals of the Act.

[37] 118 Cong. Rec. H 9119 (Daily ed. Oct. 4, 1972). These factors are set out in Section 204 of the Act, 33 U.S.C. § 1284 (Supp. 1974).

[38] 118 Cong. Rec. at S 16871 (Daily ed. October 4, 1972).

Amici urge the Court to consider this portion of their argument most seriously. The Administrator has effectively announced in his brief[39] that if he loses this round and is required to allot, he will attempt to circumvent the Court's judgment by placing the newly allotted funds in "reserve" accounts and simply refuse to obligate them. This would obviously violate the Act, since these sums would clearly not be "available" for obligation, notwithstanding the Administrator's sophistical argument to the contrary.[40] The Court must make it plain that the Administrator must allot all sums authorized and that no alternate actions that likewise defeat the purposes of the Act will be tolerated.

C. *The Administrator's argument that he is authorized to control the "rate" of spending by controlling the timing of allotments is unsupported in the Act and is inconsistent with continual funding mechanism of "reallotment".*

The Administrator, in a vain attempt to make control over allotments equivalent to control over the "rate" of spending, now says he expects ultimately to allot the sums he has withheld.[41] By periodically augmenting the allotments, so the new argument goes, the Administrator extends the time in which the authorized sums are available and hence reduces the

[39] Brief for Respondent at 27-28.

[40] *Id.* at 28, n. 12.

[41] Brief for Petitioner at 26, 29.

"rate" of spending. This is pure sophistry. All that this accomplishes is postponement of the program and the goals it was designed to achieve. As the court of appeals noted in *City of New York:*[42]

> . . . the Act nowhere mentions any type of later augmentation procedure, and rather states in section 205(a) that *"the* allotment for fiscal year 1973 shall be made not later than . . . ." (Emphasis the Court's).

Moreover, if Congress had intended the Administrator to have the kind of control over allotment he seeks to establish in this case, there would have been scant need for Congress to provide for the mechanism of automatic reallotment. 33 U.S.C. § 1285(b)(1)(1974 Supp.). Plainly, Congress constructed the statutory mechanisms of allotment and reallotment to provide for continual funding over an extended period of time to remove the uncertainty that had plagued the grant process prior to the 1972 Act. As indicated earlier, the notion of administrative discretion to allot any given amount at any given time is totally at odds with this carefully conceived statutory scheme.

D. *Neither the doctrine of sovereign immunity nor that of political question is applicable to this controversy.*

[42] Combined Appendix at 33A.

Amici are of the firm view that the Administrator has no discretion at the allotment stages. Nevertheless, we do not believe that a contrary conclusion would require, as the Administrator contends,[43] dismissal of the suit.

First, the action falls squarely within the exception to the doctrine of sovereign immunity which allows suits against federal officials who have allegedly acted beyond their statutory powers or have exercised their statutory powers in a constitutionally void manner. *Dugan v. Rank*, 372 U.S. 609, 621-22 (1963); *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 689 (1949). The mere fact that discretion is vested in a federal administrative officer does not mean that he has free reign to abuse that discretion, and whether an abuse has occurred, *i.e.*, whether the officer has exceeded his statutory authority, is clearly within the *Dugan* and *Larson* exception.

Moreover, sovereign immunity has been waived by the United States in cases of this sort by enactment of the Administrative Procedure Act, 5 U.S.C. § 701, *et seq*. Section 10 of the APA, 5 U.S.C. § 702, provides quite plainly and simply that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action wthin the meaning of a relevant statute, is entitled to judicial review thereof."

[43] *Brief for Petitioner at 30, et seq.*

In *Estrada v. Ahrens*, 296 F.2d 690 (5th Cir. 1961), the court explained the impact of the APA on sovereign immunity thusly:

> By providing judicial review in an action brought by "any person adversely affected or aggrieved by any agency action" Congress permitted suits which under established tests would certainly be barred as suits against the government . . . The Act thereby makes a clear waiver of sovereign immunity in actions to which it applies." *Estrada v. Ahrens, supra*, 296 F.2d at 698.

Accord, *Scanwell Laboratories, Inc. v. Shaffer*, 424 F.2d 859, 873-74 (D.C. Cir. 1970).[44]

The Administrator tries to hide behind the provision of the APA that excludes suits complaining of actions committed to agency discretion by law. 5 U.S.C. § 701(a). This Court has declared this to be a "very narrow exception . . . applicable in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply.'" *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 410 (1971). The statute here is not drawn in "broad terms," but rather in such highly detailed and specific terms as to negative even the slightest degree of discretion at the allotment stage. But assuming, *arguendo*, some discretion exists, it is certainly not unbridled. The Act's express commitment to specific deadlines and goals and the unmistakable evidence in the legislative history of

[44] "It seems axiomatic to us that one must imply, from a statement by the Congress that judicial review of agency action will be granted, an intention on the part of Congress to waive the right of sovereign immunity; any other construction would make the review provisions illusory." *Scanwell Laboratories, Inc. v. Shaffer*, *supra*, 424 F.2d at 874.

Congressional resolve to achieving these deadlines and goals provides ample guidelines for judicial determination of whether that discretion has been abused.

The Administrator also argues that to try to resolve whether there has been an abuse of discretion in this case would require the courts to decide a "political question."[45] The standards for determining whether this issue presents a nonjusticiable political question were provided by the Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962):

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards of resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarassment from multifarious pronouncements by various departments on one question. 369 U.S. at 217.

As in his Administrative Procedure Act argument, the Administrator urges again that there are no criteria by which to judge whether he has abused his discretion. The Court, however, is not being asked to take over the management of the Environmental Protection Agency, or to assume the weighty role of the

[45]Brief for Petitioner at 47.

President of the United States; it is being asked to construe a statute and to determine whether Congress intended to grant the Administrator discretion to take the action complained of here. Since *Marbury v. Madison*, it has always been "emphatically the province and duty of the judicial department to say what the law is". 5 U.S. (Cranch) 137, 177 (1803).

This Court recently reaffirmed the principle of *Marbury v. Madison* in a case in which the doctrine of political question was similarly urged as a bar to judicial review of Executive action. *United States v. Richard M. Nixon*, 42 U.S.L.W. 5237 (July 24, 1974). The issue was whether the doctrine prevented the Court from deciding whether the President had to comply with a subpoena to produce certain tape recordings and documents relating to his conversations with aides and advisers. The argument was made, as it is impliedly made here, that the Judiciary should defer to the judgment of the Executive as to what the law requires. The language used in rejecting the claim is particularly applicable to the instant controversy.

> Notwithstanding the deference each branch must accord the others, the "judicial power of the United States" vested in the federal courts by Art. III, § 1 of the Constitution can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a presidential veto. Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite

government. The Federalist, No. 47, p. 313 (C. F. Mittel ed. 1938). We therefore reaffirm that it is "emphatically the province and the duty" of this Court "to say what the law is" with respect to the claim of privilege presented in this case. *Marbury v. Madison, supra* at 177. *United States v. Richard M. Nixon, supra*, 42 U.S.L.W. at 5244.

Here, too, the Court cannot concede to the Executive the intrinsically judicial determination of whether the impoundment of such vast sums of money was authorized by Congress in the Act.

CONCLUSION

The court of appeals in *City of New York* was eminently correct in ruling that the Administrator was required to allot the full amounts authorized by the Act for waste treatment construction grants. *City of New York* should therefore be affirmed and *Campaign Clean Water* should be reversed and judgment rendered for full allotment in favor of Respondent Campaign Clean Water.

Even if the Court be convinced that some discretion at the allotment stage was vested in the Administrator by the Act, *amici* would still pray that the court of appeals judgment in *Campaign Clean Water* be reversed, and the district court's judgment be affirmed, since the present state of the record — the record of the marked disparity between what the Administrator has allotted and what is really needed to meet the letter and intent of the Act — shows clearly that that discretion has been flagrantly abused.

Respectfully submitted,

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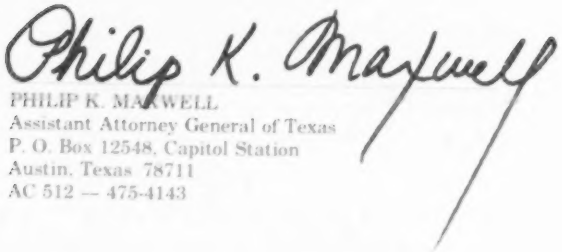

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PROOF OF SERVICE

I, Philip K. Maxwell, one of the attorneys for the States of Texas, Wisconsin, Missouri, Oklahoma and Kansas, *amici* herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 15th day of August, 1974, I served copies of the foregoing brief to the Supreme Court of the United States and on the several parties thereto, as follows:

1. On the United States, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to Robert H. Bork, Solicitor General, Carla Hills, Assistant Attorney General, Daniel M. Friedman, Deputy Solicitor General, Edmund W. Kitch, Assistant to the Solicitor General, Robert E. Kopp, and Eloise Davies, Attorneys, Department of Justice, Washington, D.C., 20530.

2. Norman Redlich, Corporation Counsel, John R. Thompson, First Assistant Corporation Counsel, Evan A. Davis, Gary Mailman, and Alexander Gigante, Jr., Assistant Corporation Counsels, Attorneys for the City of New York, Municipal Building, New York, New York, 10007, and James R. Atwood, Covington & Burling, 888 — 16th Street, N.W., Washington, D.C., 20006, Of Counsel, in duly addressed envelopes with air mail postage prepaid.

3. Alan B. Morrison and W. Thomas Jacks, Suite 700 — 2000 P Street, N.W., Washington, D.C., 20036, Attorneys for Respondent, Campaign Clean Water, in a duly addressed envelope with postage prepaid.

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ADDENDUM I

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

600 CAMP STREET
NEW ORLEANS, LA. 70130

May 28, 1974

TO ALL COUNSEL OF RECORD:

No. 73-3965 - State of Texas, et al, v.
No. 73-4026 - Russell E. Train, Administrator of the Environmental Protection Agency.

[Argued & Submitted 4-29-74 - N.O. West Courtroom]

Gentlemen:

I am directed by the Court to advise that the disposition of the referenced cases is being withheld pending decision of the Supreme Court in the cases *Train v. City of New York*, (73-1377), *Train v. Campaign Clean Water* (73-1378), certiorari granted April 29, 1974.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By /s/ Richard E. Windhorst, Jr.
Richard E. Windhorst, Jr., Chief
Judicial Support Division

REW, Jr.:rcv

Messrs. Robert E. Kopp &
Eloise E. Davies
Mr. Theodore L. Priebe
Mr. Paul C. Duncan
Mr. Philip Maxwell
Mr. Curt Schneider

WATER FUNDS: EPA Regional Admr. Busch says Texas has received the lion's share of wastewater grants awarded in Region VI. Texas, Louisiana, Arkansas, Oklahoma and New Mexico. Of the $69,101,286 awarded in the region since July, 1973, Texas got $37,441,255. The funds came from the Congressionally appropriated $9 billion for the states in fiscal years 1973, 1974, and 1975. With two of the years over, EPA has allocated $3 billion nationwide, or $134,756,239 to States in Region IV, Busch said. "The agency expects to award much of the remaining $6 billion in the next 12 months."

Busch added, "I am extremely pleased with the progress being made in our construction grants program, and am confident that a solid base has been established to carry forward a program in achieving our goal of clean water. We will be working closely with State and local officials in the months ahead to keep the program moving. I am also pleased to announce that the States in Region VI were the first in the nation to submit their priority lists for FY '75 funds."

FUND DEFICIT: Even with Texas getting the lion's share of the Federal money available, the Water Quality Board says that **Texas cities have 204 projects that won't be funded** because Federal funds available in FY '75 are $27,000,000 short of what is needed. The WQB's project list includes $169,100,000 in projects, while available Federal funds amount to $142,100,000. Board Exec. Dir. Yantis wrote Texas members of Congress about the problem and included a detailed list of which projects will be funded and which ones are caught in the $27 million deficit. He added that "to complete construction just for this list" would require $615,000,000 in the future and $678,000,000 if related costs, such as infiltration studies, are included. Yantis said that means the real deficit in grant funds is "approximately $450 to $500 million."

Projects falling into the **$27,000,000 short and won't be funded category** by Congressional district are: **Dist 1** — Joaquin, Seven Points, Hallsville, Campbell, Omaha, Bullard, Douglassville-Marietta, Murchison, Reno, Broaddus, Winfield, Tenaha, Lemmus MUD and Athens. **Dist 2** — Montgomery County MUD 6, Liberty-Dayville FWSD 1, Lazy River Improvement Dist. of Montgomery County, Devers, Coldspring, Sour Lake, Kirbyville, South Zulch MUD, Whispering Oaks, Orange, Evadale ISD, Kountze, Grapeland, Tucker ISD, Woodville, Jewett, Kennard and Hardin County WCID 1. **Dist 3** — Richardson, Little Elm, Glenn Heights, Dallas (3 projects), Murphy, Woodland Hills, Cooper and Dallas County Community College. **Dist 4** — Howe, Lindale, Highland Village, Rowlett, Kemp, Roxse City, Campbell, Bullard, Little Elm, Lake Dallas MUA, Glenn Heights, Collinsville, Aubrey, Tom Bean, Pilot Point, Fate, Crandle and Westminster. **Dist 5** — the projects in Dallas County listed in Dist 3 plus Seagoville. **Dist 6** — The projects in Dallas County in Dist 5 plus Garrett, Streetman and Hubbard. **Dists 7, 8, 18 and 22**: Harris FWSD 6, Tomball, Spenwt & Place MUD, college View MUD, Clearwoods Improvement Dist, Harris County WCID 1, Port of Houston, Lomax, Harris UD 5, Fort Bend WCID 2. **Dist 9** — Galveston WCID 19, Beach City, Jefferson WCID 10, Bevil Oaks, San Leon MUD, Port of Galveston and Jefferson FWSD 1. **Dist 10** — Pflugerville, Barton, Carmine, Florence, Hays County-Wimberly WSD, Dune Box, Glidden FWSD, Clay, Sunset Valley, Hempstead, Snook, Fayett WCID and San Marcos.

Dist 11 — Gatesville, Bertram, Thorndale, McGregor, Bell WCID 4, Fort Gates, Goldthwaite, Round Rock, Hattis, Loreto, Milano WCID 1, Maltic Lab WCID 1, Hewitt, Morgan, Fort Bedell and Lacy Lakeview. **Dist 12** — North Tarrant MWD and Saginaw. **Dist 13** — Megargel, Windthorst, Coldiron and Canyon. **Dist 14** — Wharton WCID 10, Victoria-Guadalupe Blanco RA, Crapus County and Nueces WCID 15. **Dist 15** — Port Mansfield PUD and Edcouch. **Dist 16** — Odessa, Van Horn, Goldsmith, Ft Hancock WCID 1 and Rankins. **Dist 17** — Haskell, San Saba, Anson, Tye, Roby, Cross Plains, De Leon, Newark, Layton, Comanche, Gainesville, Gorey, Eastan and Stephenville. **Dist 19** — Shallowater, Odessa (listed in Dist five Abernathy, New Deal and Sawyer. **Dist 20** — San Antonio (2 projects) and Somerset. **Dist 21** — those noted in Dist 20 plus Sunrise Beach MUD 1, Boerne, Junction, Fredericksburg, Crockett WCID 1, Sterling City, Brackettville, Winters, New Braunfels and Morrison. **Dist 23** — Those listed in Dist 20 plus Carrizo Springs, Laredo, Natalia, Jourdanton, Big Wells, Dilley and Maverick County. **Dist 24** — those listed in other Dallas County districts plus Flower Mound and Sanger.